

### **REMARKS/ARGUMENTS**

Prior to entry of this Amendment, claims 1, 2, 4-15 and 17-22 were pending in this application. No claims are amended, no claims are added, and no claims are canceled herein. Therefore, claims 1, 2, 4-15 and 17-22 remain pending in this application. The Applicants respectfully request reconsideration of this application for at least the reasons presented below.

#### **35 U.S.C. §102 Rejection, Kalva**

The Office Action has rejected claims 1, 2, 4-15 and 17-22 under 35 U.S.C. §102(a) as being unpatentable over Kalva et al., “Techniques for Improving the Capacity of Video on Demand Systems”, Proceedings of the 29th Annual International Conference on System Science, IEEE 1996, pp. 308-315 (hereinafter “Kalva”). The Applicants respectfully traverse the rejection for at least the following reasons.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP 2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The Applicants respectfully submit that Kalva fails to disclose each and every claimed element. For example, Kalva fails to disclose, either expressly or inherently, commanding the end device to store content, i.e., a video or audio program, before a user specifically requests the content.

The Final Office Action interpreted Kalva as suggesting “stor[ing] [content] before user[s] specifically request the content.” In order to support this interpretation, the Final Office Action cited two portions of Kalva. The first portion has been more fully reproduced below:

“The **users request videos** from the server at head end. . . . The requests are served on a first-come-first-served basis and are not queued. **When a request is accepted, a channel is [then] reserved for the connection** for the entire duration of the video. . . . In addition to these assumptions **we further assume** that: User has a limited buffer so that video can be pre-delivered.” (Page 309, column 1, line 46 to column 2, line 16, emphasis added)

It appears that the Final Office Action hinged on the word “pre-delivered” without realizing that it is a **further assumption after users have already requested videos**. Clearly, “pre-delivered” here cannot mean “delivered before user request.” In other words, the sequence in Kalva cannot be (1) video delivery, (2) user request, and (3) viewing.

Rather, the sequence in Kalva is (1) user request, (2) video delivery, and (3) viewing. Only this sequence is consistent with the cited portion. For example, the sentence “When a request is accepted, a channel is [then] reserved for the connection for the entire duration of the video” indicates the sequence (1) user request and (1.5) reserving a delivery channel. Only after (1.5) reserving a delivery channel can (2) video delivery then begin. In other words, **without reserving a delivery channel, video cannot be delivered; without user request, a delivery channel cannot be reserved**. Thus, (1) user request must occur before (2) video delivery.

Consequently, the Final Office Action’s interpretation of “pre-delivered” as meaning “delivered before user request” is clearly inconsistent with the sequence in Kalva. Rather, because the rest of the sequence is (2) video delivery and (3) viewing, “pre-delivered” should be interpreted as “delivered before viewing.”

The second portion that the Final Office Action cited has also been more fully reproduced below:

“If  $S_0$  is the number of segments that can be buffered at user’ premises, for partial multicasting to be possible, the video has to be **requested before segment number  $S_0$  is transmitted** in the current session.” (Page 311, column 1, last paragraph, emphasis added)

Thus, the completed sentence in fact supports the sequence (1) user request and (2) video delivery, which is the converse of (1) video delivery and (2) user request as interpreted by the Final Office Action.

Therefore, Kalva does not disclose commanding an end device to store content, i.e., a video or audio program, **before** a user specifically requests the content. Rather, under Kalva, only **after** a user requests content is the content delivered to the user's location.

Claim 1, upon which claims 2, 4-7, and 21-22 depend, is directed to a method for distributing content sent by a content distributor to a user location. Claim 14, upon which claims 15 and 17-20 depend, is directed to a distribution program product having code for distributing content sent by a content distributor to a user location. Both claim 1 and claim 14 recite in part "receiving a command from the content distributor to store the content at the user location before a user specifically requests the content, wherein the content comprises at least one of a video program or an audio program." Kalva does not disclose **receiving a command from the content distributor to store content**, i.e., a video or audio program, at the user location **before a user specifically requests the content**. Rather, Kalva teaches delivering content **only after a user requests the content from a content distributor**. For at least these reasons, claims 1-2, 4-7, 14-15, and 17-22 are distinguishable from Kalva and should be allowed.

Claim 8, upon which claims 9-13 depend, is directed to a method for distributing content sent by a content distributor to a user location and recites in part "commanding the user location to store the content from the content distributor without a user associated with the user location specifically requesting the content" and "sending the content to the user location for storage before a user specifically requests the, wherein the content comprises at least one of a video program or an audio program." Kalva does not disclose **commanding the user location to store the content from the content distributor without a user associated with the user location specifically requesting the content** or sending the content to the user location for storage before a user specifically requests the content. Rather, Kalva teaches delivering content

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**only after a user requests the content from a content distributor.** For at least these reasons, claims 8-13 are distinguishable from Kalva and should be allowed.


**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

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Respectfully submitted,



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